

Introduced by Senator Dunn

February 22, 2005

An act to amend Sections 4062.1, 4600.2, and 4663 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1023, as introduced, Dunn. Workers' compensation.

Existing workers' compensation law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law contains provisions relating to formal medical evaluations, pharmacy contracts, and apportionment.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4062.1 of the Labor Code is amended to
2 read:
3 4062.1. (a) If an employee is not represented by an attorney,
4 the employer shall not seek agreement with the employee on an
5 agreed medical evaluator, nor shall an agreed medical evaluator
6 prepare the formal medical evaluation on any issues in dispute.
7 (b) If either party requests a medical evaluation pursuant to
8 Section 4060, 4061, or 4062, either party may submit the form
9 prescribed by the administrative director requesting the medical
10 director to ~~assign~~ request a panel of three qualified medical
11 evaluators ~~in accordance with~~ pursuant to Section 139.2.

1 However, the employer may ~~not~~ submit the form ~~unless only if~~
2 the employee ~~has not submitted~~ *fails to submit* the form within 10
3 days after the employer has furnished the form ~~to the employee~~
4 and requested the employee to submit the form. The party
5 submitting the request form shall designate the specialty of the
6 physicians ~~that~~ *who* will be assigned to the panel.

7 (c) Within 10 days of the issuance of a panel of qualified
8 medical evaluators, the employee shall select a physician from
9 the panel to prepare a medical evaluation, the employee shall
10 schedule the appointment, and the employee shall inform the
11 employer of the selection and the appointment. If the employee
12 does not inform the employer of the selection within 10 days of
13 the assignment of a panel of qualified medical evaluators, then
14 the employer may select the physician from the panel to prepare
15 a medical evaluation. If the employee informs the employer of
16 the selection within 10 days of the assignment of the panel but
17 has not made the appointment, or if the employer selects the
18 physician pursuant to this subdivision, then the employer shall
19 arrange the appointment. Upon receipt of written notice of the
20 appointment arrangements from the employee, or upon giving the
21 employee notice of an appointment arranged by the employer,
22 the employer shall furnish payment of estimated travel expense.

23 (d) The evaluator shall give the employee, at the appointment,
24 a brief opportunity to ask questions concerning the evaluation
25 process and the evaluator's background. The unrepresented
26 employee shall then participate in the evaluation as requested by
27 the evaluator unless the employee has good cause to discontinue
28 the evaluation. For purposes of this subdivision, "good cause"
29 shall include evidence that the evaluator is biased against the
30 employee because of his or her race, sex, national origin,
31 religion, or sexual preference or evidence that the evaluator has
32 requested the employee to submit to an unnecessary medical
33 examination or procedure. If the unrepresented employee
34 declines to proceed with the evaluation, he or she shall have the
35 right to a new panel of three qualified medical evaluators from
36 which to select one to prepare a comprehensive medical
37 evaluation. If the appeals board subsequently determines that the
38 employee did not have good cause to not proceed with the
39 evaluation, the cost of the evaluation shall be deducted from any
40 award the employee obtains.

(e) If an employee has received a comprehensive medical-legal evaluation under this section, and he or she later becomes represented by an attorney, he or she shall not be entitled to an additional evaluation.

SEC. 2. Section 4600.2 of the Labor Code is amended to read:

4600.2. (a) Notwithstanding Section 4600, when a self-insured employer, group of self-insured employers, insurer of an employer, or group of insurers contracts with a pharmacy, group of pharmacies, or pharmacy benefit network to provide medicines and medical supplies required by this article ~~to be provided~~ to injured employees, those injured employees that are subject to the contract shall be provided medicines and medical supplies ~~in the manner as~~ *as* prescribed in the contract for as long as ~~medicines or medical supplies~~ *these items* are reasonably required to cure or relieve the injured employee from the effects of the injury.

(b) Nothing in this section shall affect the ability of employee-selected physicians to continue to prescribe and have the employer provide medicines and medical supplies that the physicians deem reasonably required to cure or relieve the injured employee from the effects of the injury.

(c) Each contract described in subdivision (a) shall comply with standards adopted by the administrative director. In adopting those standards, the administrative director shall seek to reduce pharmaceutical costs and may consult any relevant studies or practices in other states. The standards shall provide for access to a pharmacy within a reasonable geographic distance from an injured employee's residence.

SEC. 3. Section 4663 of the Labor Code is amended to read:

4663. (a) Apportionment of permanent disability shall be based on causation.

(b) Any physician who prepares a report addressing the issue of permanent disability due to ~~a claimed~~ industrial injury shall in that report address the issue of causation ~~of the permanent disability~~.

(c) ~~In order for a physician's report to~~ *To* be considered complete on the issue of permanent disability, ~~it a physician's report~~ *a physician's report* must include an apportionment determination. ~~A physician shall make an apportionment determination~~ by finding what approximate percentage of the permanent disability was caused

1 by the direct result of injury arising out of and occurring in the
2 course of employment and what approximate percentage of the
3 permanent disability was caused by other factors both before and
4 subsequent to the industrial injury, including prior industrial
5 injuries. ~~If the A physician who is unable to include an~~
6 ~~apportionment determination in his or her report, the physician~~
7 ~~shall state the specific reasons why the physician could not make~~
8 ~~a determination of the effect of that prior condition on the~~
9 ~~permanent disability arising from the injury could not be made.~~
10 The physician shall then consult with other physicians or refer
11 the employee to another physician from whom the employee is
12 ~~authorized to seek for treatment or evaluation in accordance with~~
13 ~~pursuant to~~ this division in order to make the final determination.
14 (d) An employee who claims an industrial injury shall, upon
15 request, disclose all previous permanent disabilities or physical
16 impairments.